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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 SONIA LOPEZ,

8 Plaintiff,

9 v.

10 THE KROGER COMPANY, et al.,

11 Defendants.

Case No. 2:16-cv-02457-KJD-PAL

ORDER

(Mot Compel Docs – ECF No. 36)

12 Before the court is plaintiff's Motion to Compel Disclosure of Documents Pursuant to Fed.
13 R. Civ. P. 26 (ECF No. 36). The court has considered the motion, Smith's Opposition (ECF No.
14 37) and plaintiff's Reply (ECF No. 38).

15 The complaint in this case was filed in state court and removed (ECF No. 1) October 20,
16 2016. It involves a slip and fall at a Smith's Food and Drug Store on Maryland Parkway in Las
17 Vegas, Nevada on February 18, 2015. In the current motion, plaintiff seeks an order compelling
18 the defendants to produce all slip-and-fall incident reports for the five-year period prior to the
19 incident at issue. Defendants objected to plaintiff's discovery request, but produced documents
20 concerning prior slip and fall incidents in the front of the store where the ice machine which is the
21 alleged source of the liquid on which plaintiff slipped was located for two years prior to this
22 incident. There were two prior incidents in December 2014, and defendant produced the incident
23 report for them.

24 Defendants' opposition represents that video surveillance of the incident reflects that a
25 customer took a bag of ice from the ice machine at the front of the store, turned around and put the
26 bag of ice back into the machine and got another bag. The customer looked down as if something
27 may have fallen from the bag. A few minutes after the ice cubes spilled, a store employee walked
28 by and saw the ice, stopped to secure the area, and called a courtesy clerk who cleaned up the ice.

1 Five to six minutes after the courtesy clerk cleaned up the area, the plaintiff is allegedly seen
2 walking rapidly through the area in flip flops. Her right foot slid out in front of her and she went
3 down onto her left leg with her right arm going back for support and stood back up in less than
4 one second. However, the plaintiff claimed that she slipped on ice or water on the ground and fell
5 on her face and broke her tooth and suffered a brain injury, which is belied by the surveillance
6 video. Under these circumstances, defendants argue that plaintiff's request for documents
7 concerning any and all incident reports and related documents pertaining to slip-and-fall incidents
8 in the subject store for the five-year period preceding the incident involved in this case is not
9 relevant. Plaintiff has no evidence to establish Smith's had notice of a permanent unsafe condition,
10 or that the ice machine in the front of the store represents a continuous ongoing problem.

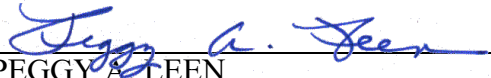
11 Plaintiff replies that her request for incident reports and related documents for all areas
12 accessible to customers for five years prior to the subject incident is relevant and discoverable.
13 Even if the additional incident reports are inadmissible to show defendant had notice of the issue
14 because it was a temporary condition, the incident reports for five years prior to the incident are
15 relevant evidence of whether defendants adequately trained and supervised its employees on
16 documenting and cleaning up spills. Plaintiff acknowledges that the evidence shows that
17 employees noticed and attempted to clean up the spill. However, the fact that the plaintiff slipped
18 anyway "makes the adequacy of defendants' training of employees and policies and procedures
19 for cleaning up spills relevant." Although the condition of the floor causing plaintiff's fall may
20 have been temporary, "defendants' policies and procedures for cleaning up spills were permanent,
21 or at least static, at the time the incident occurred." For these reasons, and the fact that defendants'
22 30(b)(6) witness was not adequately prepared to testify about five years of prior incident reports,
23 the court should grant the plaintiff's motion to compel.

24 Having reviewed and considered the moving and responsive papers and supporting
25 exhibits, the court finds that plaintiff's request for production no 3 for "copies of any and all
26 incident reports, correspondence, writings, lists, regulations, and/or maintenance logs, and/or other
27 documentation, specifically relating to any and all slip-and-fall incidents that occurred at the
28 Smith's where the subject incident occurred, for the period of January 1, 2010 through to, and

1 including the date of your response to this request” is overbroad, and disproportional to the needs
2 of this case. It requests incident reports for all slip and falls in the store for 5 years prior to this
3 incident regardless of the type of incident, the nature of the substance involved, and where in the
4 store the incidents occurred.

5 **IT IS ORDERED** that plaintiff’s Motion to Compel Disclosure of Documents Pursuant to
6 Fed. R. Civ. P. 26 (ECF No. 36) is **DENIED**.

7 DATED this 25th day of October, 2017.

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10 PEGGY A. LEEN
11 UNITED STATES MAGISTRATE JUDGE
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